

ST 00-0228-GIL 10/20/2000 TELECOMMUNICATIONS EXCISE TAX

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 35 ILCS 630/3 and 630/4. (This is a GIL).

October 20, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated June 5, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department, 2 Ill. Adm. Code 1200.120(b) and (c) (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>).

In your letter, you have stated and made inquiry as follows:

I am writing to request a private letter ruling, regarding the applicability of the Illinois Telecommunications Excise Tax for business activities by COMPANY

The Company

COMPANY is the telecommunications subsidiary of the BUSINESS. It is incorporated in the STATE and licensed to do business in the State of Illinois.

COMPANY is an inter-exchange carrier. The vast majority of the company's business, including all of its Illinois business is as a wholesale supplier of telecommunication capacity to other carriers. That is, COMPANY carries traffic for other companies such as AT&T, Sprint, MCI, etc.

COMPANY does not offer retail telecommunication services in the State of Illinois at the present time.

The Situation

In 1997, COMPANY entered into a Multi Party Buy/Sell Agreement with a number of telecommunication companies in the Midwest. The Agreement provides a vehicle for the parties to purchase wholesale telecommunication capacity from one another. COMPANY is currently purchasing circuits from TAXPAYER and TAXPAYER has been billing COMPANY for the Illinois Telecommunication Excise Tax.

The Tax

COMPANY believes that TAXPAYER is improperly levying the telecommunication excise tax. It is our understanding that the Excise Tax levied pursuant to Title 35, Section 630, et., seq. of the Illinois code is applicable:

‘at a rate of 5% of the gross charge for such telecommunications
purchased at retail from a retailer, by such person. (emphasis added)

As indicated above, COMPANY does not conduct retail business in the State of Illinois. The circuits purchased from TAXPAYER are used exclusively for traffic generated by other carriers.

Assistance

Given the information provided above, please advise me whether the Illinois Telecommunications Excise Tax is applicable. Further, if COMPANY is exempt from the tax, please send me a copy of whatever forms the company should submit to the state to clear up this matter.

Closing

If you need additional information, please contact me at #####. Thank you in advance for your time, help, and consideration.

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. The Act defines gross charges as including amounts paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by retailers, 35 ILCS 630/2(a).

Please note that retailers of telecommunications who are reselling telecommunications are required to register with the Department, file returns, and remit Telecommunications Excise Tax directly to the Department. Purchases by telecommunications retailers from local and long distance carriers for line time may be purchased without incurring tax by providing these suppliers with resale certificates.

Section 8 of the Act (35 ILCS 630/8) provides that if persons who originate or receive telecommunications in this State claim to be a reseller of such telecommunications, such persons shall apply to the Department for a resale number. Upon approval of the application, the Department shall assign a resale number to the applicant and certify such number to him. Except as provided in the Act, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with sales of telecommunications for resale. Likely, your supplier charged you tax since you have no resale number.

If tax is paid to local and long distance carriers for line time that is purchased for resale, a registered telecommunications provider can take a credit against its Telecommunications Excise Tax liability without filing a claim with the Department. See 86 Ill. Adm. Code 495.130, enclosed. If a reseller of telecommunications who is not required to be registered has paid tax to local or long distance carriers for line time that was for resale, the carrier could refund the tax to the reseller and file a claim for credit with the Department. These provisions are set forth in 35 ILCS 630/10.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.